

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TOBIN DON LEMMONS,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-06-353-L
)	
JUSTIN JONES, Director,)	
)	
Respondent.)	

ORDER

Petitioner, a state prisoner appearing *pro se*, filed this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Gary M. Purcell on June 8, 2006, wherein he recommended that the respondent's Motion to Dismiss be granted and the petition be dismissed due to petitioner's failure to exhaust administrative remedies and, alternatively, due to the expiration of the statute of limitations.

The Report and Recommendation states that petitioner failed to respond to the respondent's Motion to Dismiss. The court file reflects that the Magistrate Judge granted petitioner until June 7, 2006 to file his response to the dismissal motion. As stated the Report and Recommendation was entered on the next day, June 8, 2006. Petitioner's "Objection and Response to Respondent's Motion to Dismiss the Petition for Writ of Habeas Corpus" was filed on June 9, 2006, and

indicates it was sent by petitioner on June 6, 2006. Although petitioner did not file a later objection to the Report and Recommendation within the time limits allowed, the court, in the exercise of its discretion, has reviewed petitioner's June 9, 2006 objection and response to respondent's dismissal motion and considers it as an objection to the Report and Recommendation.

Petitioner asserts that, contrary to respondent's contention, 57 O.S. § 564.1 (effective May 10, 2005) is not applicable to petitioner's proceeding. This argument is unavailing however, since the Magistrate Judge agreed that the petition for a writ of habeas corpus should not be dismissed on the basis of this judicial remedy. Report and Recommendation, p. 4 (citation omitted).

Petitioner's objection fails to provide an adequate basis for overturning the conclusions of the Magistrate Judge in this case.

Having conducted a *de novo* review of the matter, the court finds that the Report and Recommendation should be adopted in its entirety. **Accordingly, respondent's Motion to Dismiss [Doc. No. 8] is GRANTED as follows: The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 is DISMISSED due to petitioner's failure to exhaust administrative remedies**

and, alternatively, due to the expiration of the statute of limitations.

It is so ordered this 7th day of July, 2006.



TIM LEONARD
United States District Judge